



# County of San Mateo

## Inter-Departmental Correspondence

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**Department:** PLANNING AND BUILDING

**File #:** 24-031

Board Meeting Date: 1/23/2024

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**Special Notice / Hearing:** 10-day  
notice: publication and 300-foot radius

**Vote Required:** Majority

**To:** Honorable Board of Supervisors

**From:** Steve Monowitz, Director of Planning and Building

**Subject:** Consideration of an appeal of the Planning Commission's decision to approve a Non-Conforming Use Permit (NCUP) and Major Modification of an approved Design Review Permit and Grading Permit at 570 Live Oak Lane in the unincorporated Emerald Lake Hills area.

County File Number PLN 2019-00400 (Herring)

### **RECOMMENDATION:**

Public hearing to consider an appeal of the Planning Commission's decision to approve a Major Modification of a Design Review Permit, Non-Conforming Use Permit (NCUP), and Grading Permit, to allow construction of a 2,466 sq. ft. single family residence at 570 Live Oak Lane in the unincorporated Emerald Lake Hills area:

A) Open public hearing

B) Close public hearing

C) Deny the appeal and uphold the Planning Commission's decision to approve the Non-Conforming Use Permit and Major Modification of a Design Review Permit and Grading Permit, PLN 2019-00400, by making findings and adopting the conditions of approval in Attachment A and determining that the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15303.

### **BACKGROUND:**

On August 8, 2023 an appeal of the Planning Commission's decision to approve the project to the Board of Supervisors was filed by Edward Cox (Appellant). The appeal pointed to a concern that the project did not meet County Fire's conditions of approval dated August 31, 2022 for this project (Attachment F). In addition to the identifying the lack of approval of an Alternative Materials and Methods of Construction or Design Alternative (AM & MA), which has since been resolved, the

Appellant is appealing due to concerns regarding the existing condition of Live Oak Lane roadway and requests that the project's approval be conditioned to address additional roadway improvements and maintain a turnaround in the right-of-way.

The Applicant responded to the appeal by working with County Fire and receiving County Fire approval of an AM & MA.

Proposal: The applicant proposes to construct a 2,873 sq. ft. single-family residence, attached 486 sq. ft. two-car garage, pool, and 640 sq. ft. Accessory Dwelling Unit (ADU) on a non-conforming, 8,232 sq. ft. parcel, where 75,000 sq. ft. is the minimum lot size for a lot with a 45 percent slope. The project requires grading in the amount of 240 cubic yards (c.y.) of cut and 240 c.y. of fill and removal of six (6) significant trees. This proposal is a modification to the 2022 approval of a 2,466 single-family residence with a 457 sq. ft. detached garage. The applicant seeks a Non-Conforming Use Permit for additional floor area and lot coverage, including 1) floor area of 35.9 percent where 30 percent is the maximum 2) 33.5 percent lot coverage where 25 percent is the maximum, and 3) to allow a 1-foot front setback where 20 feet is required for the 640 sq. ft. ADU on an undeveloped parcel.

Report Prepared By: Erica Adams, Project Planner

Applicant: Fred Herring

Owners: Philippe Branchu and Francoise Monet

Public Notification: Ten (10) day advanced notification for the hearing was mailed to property owners within 300 feet of the project parcel and posted in the San Mateo Times.

Location: 570 Live Oak Lane, Emerald Lake Hills

APN and Size: 057-163-090; 8,232 sq. ft.

Existing Zoning: RH/DR (Residential Hillside/Design Review)

General Plan Designation: Residential/Medium Low Density Residential

Sphere-of-Influence: City of Redwood City

Existing Land Use: Undeveloped

Water Supply: City of Redwood City Municipal Water Department

Sewage Disposal: Emerald Lakes Sewer District

Flood Zone: Zone X, Panel Number 06081C0285E, Effective Date: October 16, 2012

Environmental Evaluation: The project is categorically exempt from CEQA per CEQA Guidelines Section 15303(a) (Class 3), which includes the construction of limited numbers of new, small structures on a legal parcel. One single-family residence may be constructed or converted under this exemption.

Setting: The subject parcel is located in the residential community of Emerald Lake Hills. The parcel and surrounding parcels are developed with single-family residences.

Chronology:

Date   Action

July 7, 2020   Emerald Lake Hills Design Review Officer reviews the project at a public meeting and recommends approval of the Design Review permit.

March 21, 2022   Applicant applies for a Building Permit (BLD 2022-00389) for the project to be processed concurrently with the required Planning permits.

March 30, 2022   County Fire Department (County Fire) reviews and conditionally approves BLD 2022-00389 prior to addition of ADU.

August 31, 2022   Project decision letter for Design Review Permit and staff-level Grading Permit, after submittal of a revised geotechnical report and associated County review.

September 9, 2022   Revised plans submitted for a building permit include an ADU which does not meet the minimum front setback; Planning staff determines that a NCUP is required.

May 10, 2023   Applicant submits NCUP application with a proposal for a major modification of the Design Review and Grading Permit and accompanying plans.

July 26, 2023   Planning Commission approves the NCUP and Major Modification of a Design Review Permit and Grading Permit.

August 8, 2023   Appeal filed by Edward Cox (Appellant), neighbor at 545 Live Oak Lane, which stated that the project did not meet County Fire Department's conditions of approval, dated August 31, 2022 relative to the proposed driveway and fire truck turnaround.

November 09, 2023   Applicant submits to the Planning Section an Alternative Materials and Methods of Construction or Design Alternative (AM & MA) document which has been approved by County Fire which will be included in the project building plan set.

January 23, 2024   Board of Supervisor hearing.

**DISCUSSION:**

A.   APPEAL

The Planning Commission approved the NCUP and a Major Modification of the Design Review Permit and Grading Permit on July 26, 2023. On August 8, 2023 the Planning and Building Department received an appeal of the Planning Commission's decision. The appeal states that the project did not meet County Fire's conditions of approval, dated August 31, 2022 pertaining to the fire truck turnaround (Attachment F). The appeal also raises concerns regarding the

existing condition of Live Oak Lane roadway and requests that the County require the applicant to complete additional roadway improvements and maintain a turnaround in the right-of-way.

The version of the project reviewed by the Planning Commission on July 26, 2023 which included an ADU, had the same driveway design as the initial project and building permit submission which had both been reviewed by and conditionally approved by County Fire. After the appeal was filed, staff determined that the plans approved by the Planning Commission do not conform to the conditions of approval required by County Fire in their approval of the associated building permit (BLD 2022-00389).

The Applicant responded by working with County Fire to revise the fire truck turnaround design and has received Fire's conditional approval. County Fire's approval includes the following requirements: 1) the project is required to have a 4 head sprinkler system; 2) the project is required to expand the public right of way in two areas along Live Oak Lane (260 s.f. of new paving) and install 65 feet of retaining wall; 3) the owner is required to record a maintenance agreement with the Department of Public Works; and 4) County Fire must review and approve the on-site Emergency Vehicle Turning Access Easement, which must be prepared, executed and recorded prior to issuance of a building permit. Determinations of whether to allow for options to the standard fire requirements are made by County Fire, who has approved an AM & MA for this project.

The applicant's responses to the points of the appeal can be found Attachment G. The following discussion identifies the key points raised by the Appellant and provides a response by staff:

1. The Appellant asserts that the Planning Commission did not have full information regarding the necessary changes required by County Fire's conditions of approval when it approved the project and that the project does not meet County Fire conditions of approval dated August 31, 2022, that are listed below:

a. *Minimum road width of 20 feet and load requirements to support a fire apparatus of 75,000 lbs.*

Staff's response: The Emergency Vehicle Turning Access Easement found on Attachment A of the AM&MA illustrates expansion of the existing right-of-way to 20 feet with additional paving and retaining walls. The existing road width of Live Oak Lane to the north of the parcel is allowed as a part of the revised AM & MA, approved by County Fire (Attachment H), due to the existence of areas of steep topography which prevents full compliance with County Fire standards.)

b. *Where a fire hydrant is located in the access road, a minimum road width of 26 feet is required with a minimum of 20 feet of clearance on each side of the hydrant.*

Staff's response: The existing hydrant, which is located opposite the subject parcel on Live Oak Lane does not meet the 26-foot right-of-way width but has been determined to be adequate by County Fire, when combined with other alternative methods for the project to meet fire safety measures. This requirement has been removed from County Fire's conditions of approval based on the revised and approved AM & MA (Attachment H).

c. *Access shall be provided from a publicly maintained road.*

Staff response: Live Oak Lane is not a publicly maintained road in front of the subject parcel. The approved AM & MA recognizes this condition and, accordingly, includes a requirement that the access be constructed and maintained to standards as determined by the Department of Public Works and County Fire (Attachment H). On that basis, the referenced requirement has been removed from County Fire's conditions of approval.

The appeal letter also includes assertions by the Appellant that there is bias on the part of DPW staff and the Planning Commission.

Staff's response: The Appellant makes these assertions based on what they perceive to be intentional delay by DPW staff in communicating their concerns to County Fire and admiration for the design of the project by a Planning Commissioner. These assertions focus on the perceived intentions of these persons in performance of their professional duties, instead of on the compliance aspects of the project. There is no evidence indicating any conflict of interest or undue influence upon these individuals in the performance of their duties.

## B. KEY ISSUES

### 1. Conformance with the General Plan

The General Plan Visual Quality Policy 4.4 requires urban development to "promote aesthetically pleasing development." The General Plan then calls for the establishment of guidelines for communities to achieve these goals. The establishment of the Design Review (DR) Zoning District, Section 6565 of the San Mateo County Zoning Regulations, is the mechanism that fulfills this directive. A project that complies with the Emerald Lake Hills Design Standards (Section 6565.15 of the San Mateo County Zoning Regulations) therefore conforms to the General Plan Policies 4.14 (*Appearance of New Development*) and 4.35 (*Urban Area Design Concept*). These policies require structures to promote and enhance good design, as well as improve the appearance and visual character of development in the area by managing the location and appearance of the structure. The project has been reviewed by the Emerald Lake Hills Design Review Officer and has been found to be in compliance with the Design Review Standards for Emerald Lake Hills. A detailed discussion is provided in Section A.3 of this report.

### 2. Conformance with the Zoning Regulations

A summary of project conformance with the requirements of the Residential Hillside (RH) Zoning District is provided in the table below:

Development Standard	Zoning Requirement	Approved version	Proposed Major modification	Compliance
Minimum Building Site Area	75,000 sq. ft. for slope of 45 percent	8,232 sq. ft.	No change	Legal non-conforming

Minimum Building Site Width	50 ft.	74 ft.	No change	Conforming
Minimum Setbacks · Front	20 ft. 0 ft. allowed for garage with 14 percent slope in the front half of the parcel	20 ft. -Main house. 1 ft. - Garage	20 ft Main house 1 ft. Garage 1 ft. for ADU *	No. Use Permit required for new ADU construction
· Rear	20 ft.	20 ft.	20 ft. for house	Conforming
· Sides	Combined total of 20 feet with a minimum of 7.5 ft. on each side	12.5 ft. - Left side 7.5 ft. - Right side Combined 20 ft.	12.5 ft. - Left side 7.5 ft. - Right side* Combined 20 ft. No change to combined total	Yes
Maximum Lot Coverage	25 percent or 2,058 sq. ft.	2,203 sq. ft.*	33.5 percent or 2,761 sq. ft.*	No. Use Permit required
Maximum Building Floor Area	30 percent or 2,469 sq. ft.,	2,923 sq. ft.*	35.9 percent or 2,952 sq. ft. (Excludes 640 sq. ft. ADU)	No. Use Permit required
Maximum Building Height	28 ft.	25.5 ft.	25.5 ft.	Yes
Minimum Parking	Main house: 2 covered spaces and 2 uncovered guest spaces ADU: 1 uncovered space	Main house: 2 covered spaces and 2 uncovered guest spaces	Main house: 2 covered spaces with proposed two-car garage and 2 uncovered guest spaces ADU: 1 uncovered space	Yes
ADU			Per State law, ADUs are not allowed in front setback unless no other configuration is feasible.	No. Use Permit required due to parcel being undeveloped
* Proposed non-conformity is addressed by the NCUP application.				

The proposed development requires a Non-Conforming Use Permit. The house and garage currently proposed were previously approved in 2022 but Planning staff's review of plans submitted for a building permit uncovered previously uncounted floor area and lot coverage which exceed what is allowed by zoning. Specifically, space beneath a large waterproof roof that connects the garage to the main house qualifies as floor area and lot coverage. In addition, the applicants submitted revised building plans which added the ADU in the front setback and a pool which is partially above ground, which further added to the lot coverage.

The subject parcel is substandard in size and, therefore, the site is eligible for a

NCUP which can be utilized to allow development which does not comply with zoning standards, as long as the required findings can be met. The requested NCUP is necessary to allow a major revision to a previously approved project with previously undetected and newly proposed zoning non-conformities.

Project conformance with NCUP findings is discussed in further detail in Section A.4 of this report.

### 3. Conformance with the Design Review Regulations

At the July 7, 2020 Emerald Lake Hills Design Review Officer virtual hearing, the Design Review Officer (DRO) reviewed the project. The meeting was attended by three members of the public. Concerns expressed by the members of the public focused on construction activity, concerns about grading and water run-off. The DRO clarified that design review is limited to project compliance with design standards and that the project is subject to standard construction practices and run-off prevention measures.

At the hearing, the DRO stated that the project complies with applicable design standards for Emerald Lake Hills, including Section 6565.15.A (Site Planning) with respect to topography, privacy, and tree removal. Specifically, tree removal is minimized to the extent feasible as four (4) of the six (6) significant trees to be removed are non-native and within the footprint of the proposed structure; the two (2) native trees will be replaced with native trees; and remaining trees will be protected by implementation of a tree protection plan, which is required at the building permit application stage. The DRO stated that the building shape conforms with the requirement to minimize changes to the natural topography in Section 6565.15.D (Building Shape and Bulk) and the proposed materials are consistent with Section 6565.15.G (Colors and Materials). The DRO recommended the design for approval.

The recent modifications made to the proposal do not affect the design of the project. There are no significant exterior changes to the structure. A new hearing before the Emerald Lake Hills Design Review Officer was therefore not required, the proposal is recommended for approval based on the prior analysis.

### 4. Conformance with the Use Permit Regulations

The subject parcel is 8,232 sq. ft. and has a 45 percent cross slope. The parcel is non-conforming in size, not meeting the minimum 12,000 sq. ft. parcel size for the Residential Hillside Zoning District, and also not satisfying the 75,000 sq. ft. minimum parcel size for a parcel that has an average 45 percent slope. Section 6133.3b(1)(b) of the Zoning Regulations allows development on a legal, non-conforming parcel which does not meet current zoning standards with the approval of a Non-Conforming Use Permit. Specifically, this proposal requires an NCUP to address lot coverage, floor area, and front setback for the Accessory Dwelling Unit.

The following is a discussion of the project conformance with the required findings, per Sections 6133.3b(3) and 6503 of the Zoning Regulations, for the Planning Commission to grant the Non-Conforming Use Permit. Each section addresses the residence/garage, pool, and Accessory Dwelling Unit:

a. The proposed development is proportioned to the size of the parcel on which it is being built.

The 8,232 sq. ft. subject parcel is approximately 30 percent smaller than the minimum parcel size for the zoning district, which is 12,000 square feet. Although the lot coverage and floor area requests are approximately 30 percent more than allowed by zoning, the excesses are largely due to the connecting roof design element, not the size of the residence development, which demonstrates proportionality.

The footprint of the proposed residence and garage (the two structures without the roof connector) comply with the RH zoning lot coverage (approx. 1,960 sq. ft.). The floor area of the residence and garage exceeds allowed floor area by 245 sq. ft. and are proportional to the size of the parcel.

The roof connecting the garage to the house, creates an additional 241 sq. ft. of noncompliant floor area and 143 sq. ft. lot coverage. Even though the roof adds to the total lot coverage and floor area, it is a unique architectural feature that is integral to the unique design of this home, and it does not negatively impact proportionality. A use permit for the 486 sq. ft. of floor area and 143 sq. ft. of lot coverage, especially for an architectural feature, is consistent with allowing the development to be proportioned to the size of the parcel.

The proposed pool creates an additional 558 sq. ft. of lot coverage, due to the slope of the parcel. The lot coverage from the pool is created by topography and is development that is typically not counted as lot coverage when the pool is less than 18 inches above grade. Therefore, when considering the steep cross slope of the parcel, the pool request is consistent with that of other parcels of similar size.

The size of the 640 sq. ft. ADU is proportionate to the size of the parcel. It is also less than the 800 sq. ft. minimum ADU allowed by State law, and the ADU will be placed beneath the proposed garage and walkway, which creates no additional lot coverage. Only the placement of the ADU within the front yard setback, approximately 1-foot from the front property line, on an undeveloped parcel, requires relief from zoning regulations, and proportionality is not impacted.

b. All opportunities to acquire additional contiguous land in order to achieve conformity with the zoning regulations currently in effect have been investigated and proven to be infeasible.

There is just one parcel contiguous to the subject parcel. That parcel is vacant, substandard in size (approximately 7,000 sq. ft.), and has a 15-foot pole for access to the public right of way. Conformity with zoning requirements could only be achieved with the addition of at least 2,900 sq. ft. of land from the contiguous parcel. This amount of land would render that parcel nearly undevelopable.

The applicant contacted the adjacent property owners to express interest in purchasing land. The neighbor indicated there was no interest in selling any land.

c. The proposed development is as nearly in conformance with the zoning



regulations currently in effect as is reasonably possible.

The lot coverage and floor area requested are related to three aspects of the project: the house/garage, the roof over the walkway connecting the garage to the house, and the proposed pool. The ADU is exempt from lot coverage and floor area limits under State law.

The subject parcel is substandard in size and has constraints of a 20-foot front yard setback along the 140-foot street frontage bulb on Live Oak Lane, where 50 feet of frontage is typical. This additional setback area reduces the buildable area to approximately 3,000 sq. ft. In addition, the parcel has steep topography and a creek on the south side, all of which limit where development can occur.

The slope of the parcel constrains garage placement to the front of the parcel. The footprint for the residence meets the 20-foot setback and 20-foot rear setback. Due to the curve of the frontage of the parcel, there is approximately a 31-foot separation between the garage and the house. It is reasonable to have a covered walkway for that distance if possible. However, based on zoning definitions, the unenclosed, covered areas, created by the roof are calculated in floor area totals. The proposed roof style creates an additional 241 sq. ft. of both lot coverage and floor area. Removal of the connecting roof substantially changes the design of the project, would be inconsistent with the Design Review Permit approval, and is not desired by the applicant.

The proposed development conforms with height and rear and side setbacks. The requested living area is substantially in conformance with floor area regulations considering that covered parking requirements account for a higher percentage of available FAR on smaller parcels. The ADU does not contribute to lot coverage.

The request for additional lot coverage to allow a pool is driven by steep slope of the parcel. The proposed pool is relatively small, just 410 sq. ft., but due to the slope of the property it is counted as an above grade structure and contributes to the parcel's lot coverage. The applicant recognizes that the lot coverage creates more non-conformity, however it is a feature that is desired for the family and can only be allowed with a Non-Conforming Use Permit. As previously mentioned, the cross slope of the parcel is a significant factor in the creation of this non-compliance with lot coverage limits.

Many ADUs are provided above garages or within converted garages. The proposed garage is allowed at the property line due to the slope of the parcel, and by placing the ADU beneath the garage, no new lot coverage is created, the unit will have better separation from the main residence, and the impact on surrounding properties is less than placing an additional structure in the side or rear yard. Recent changes to State law allow ADU encroachment in the front setback without a use permit, but only where no other configuration is feasible. Because the parcel is undeveloped, alternative site designs that retain the front setback could be feasible, and therefore the NCUP is necessary to allow the ADU in the front setback in this instance.

d. The establishment, maintenance, and/or conducting of the proposed use will

not, under the circumstances of the particular case, result in a significant adverse impact to coastal resources, or be detrimental to the public welfare or injurious to property or improvements in the said neighborhood.

The proposed design is compatible with the surrounding residences and with the Emerald Lake Hills community due to project adherence to Emerald Lake Hills Design Review Standards and has been recommended for approval by the Design Review Officer. The proposed residential development is comparable in size to other residences in the areas. Additionally, the project has been reviewed by County Fire and the Department of Public Works and preliminarily approved and conditions of approval have been included in Attachment A. The project is not located in the Coastal Zone and would not impact coastal resources. Based on the foregoing, staff has determined that this proposal would not be detrimental to the public welfare or injurious to property or improvements in the neighborhood.

e. Use permit approval does not constitute a granting of special privileges.

Section 6133 allows for development of non-conforming structures on non-conforming parcels with the granting of a Non-Conforming Use Permit. The County has granted NCUPs allowing exceptions to floor area, lot coverage, setbacks and height to allow residential construction on constrained parcels. Many parcels in Emerald Lake Hills are substandard in size and have challenging topography, and similarly have received NCUPs to facilitate development. Therefore, this request is similar and consistent with such prior approvals and would not constitute a granting of special privileges.

## 5. Conformance with County Grading Regulations

The proposed project requires approximately 240 c.y. of cut and 240 c.y. of fill to accommodate the proposed residence and pool. Planning and Geotechnical staff have reviewed the proposal and submitted reports and determined that the project conforms to the criteria for review contained in the Regulations for Excavating, Grading, Filling and Clearing on Lands in Unincorporated San Mateo County (referred to in this report as "Grading Regulations"). The findings and supporting evidence are outlined below:

a. That the granting of the permit will not have a significant adverse effect on the environment.

The project will have a less-than-significant impact on the environment with the implementation of standard conditions of approval which will require excavated earth to be off-hauled and deposited to an approved disposal location, require application of erosion control measures prior to and during project grading and construction, place limitations on grading during the wet season, and require the Project Engineer to submit written certification that all grading has been completed in conformance with the approved plans, conditions of approval, and the Grading Regulations.

b. That the project conforms to the criteria of the San Mateo County Grading Ordinance.

The project, as conditioned, conforms to the criteria for review contained in the Grading Regulations, including an adequate erosion and sediment control plan and dust control measures.

- c. That the project is consistent with the General Plan.

As outlined earlier in Section A of this report, the project conforms to applicable components of the County's General Plan.

C. ENVIRONMENTAL REVIEW

The project is categorically exempt from CEQA per CEQA Guidelines Section 15303(a) (Class 3), which includes the construction and location of limited numbers of new, small structures on a legal parcel. One single-family residence may be constructed or converted under this exemption.

D. REVIEWING AGENCIES

Building Inspection Section  
Building Drainage Section  
Department of Public Works  
County Fire  
Local Agency Formation Commission (LAFCo)  
County Arborist

This report has been reviewed and approved by the County Attorney's Office as to form.

**FISCAL IMPACT:**

There is no fiscal impact to the County from denying the appeal and upholding the Planning Commission's approval of the requested permits.

Attachments:

- A. Recommended Findings and Conditions of Approval
- B. Assessor's Parcel Map and Vicinity Map
- C. Project Survey and Plans
- D. Decision letter dated August 31, 2022
- E. Planning Commission Letter of Decision, dated July 26, 2023
- F. Appeal filed on August 26, 2023
- G. Applicant's response to appeal, dated August 24, 2023
- H. Alternative Materials and Methods of Construction or Alternate Design form signed by County Fire, dated October 12, 2023.
- I. Staff Report for July 26, 2023 Planning Commission Hearing